

A RESOLUTION BY

03-R-0586

COUNCILMEMBER H. LAMAR WILLIS

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA, TO EXECUTE A FIRST AMENDMENT TO AN AGREEMENT WITH THE CITY OF COLLEGE PARK WHEREBY THE CITY OF ATLANTA WILL INSTRUCT COLLEGE PARK WHERE TO LOCATE POWER LINE POLES THAT ARE BEING RELOCATED TO ACCOMMODATE THE HARTSFIELD ATLANTA INTERNATIONAL AIRPORT'S FIFTH RUNWAY, AND WHEREBY THE CITY OF ATLANTA SHALL INDEMNIFY THE CITY OF COLLEGE PARK, TO THE EXTENT PERMITTED BY LAW, WITH REGARD TO THE LOCATION OF THE POWER LINE POLES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (hereinafter "Atlanta") owns and operates the William B. Hartsfield Atlanta International Airport (hereinafter "Airport"), situated in the counties of Fulton and Clayton in the State of Georgia, and consisting of four aircraft runways and associated taxiways and two passenger terminals and six concourse buildings for use by the airlines serving the Airport; and

WHEREAS, Atlanta has undertaken an Airport expansion program to meet the continuing growth in passenger and aircraft activity, including construction of a fifth runway (hereinafter "Fifth Runway"), in accordance with the new Master Plan for the Airport, which requires the acquisition of additional land and the improvements thereon, and the relocation of residents, businesses, streets, and utilities; and

WHEREAS, the City of College Park (hereinafter "College Park") provides electric service to numerous customers within the vicinity of the proposed Fifth Runway, and owns distribution power lines, poles, and related equipment in connection therewith. Some of College Park's distribution power lines, poles, and related equipment are in the footprint of the Fifth Runway construction (hereinafter "Infrastructure") and therefore must be relocated; and

WHEREAS, Atlanta and College Park entered into an agreement on the 10th day of December 2002 for the relocation of College Park's Infrastructure ("Agreement"); and

WHEREAS, the Agreement provided that "College Park's overhead distribution lines will be rerouted underground around the end of the fifth runway Safety Area, where the lines will reconnect to the existing overhead system. This Underground relocation will permit the fifth runway and its taxiway system to be constructed without any runway clearance violations or location conflicts as defined by the City (of Atlanta)"; and

WHEREAS, the Agreement further states that "the three circuits' new routes will begin at the overhead to underground transition point near I-285 and will end at transition points north of the safety area for the fifth runway"; and

WHEREAS, the Airport has determined that it will be much more expensive to have the Infrastructure placed underground as compared with above-ground placement in certain locations of the Infrastructure's new route; and

WHEREAS, the Airport has determined a new placement for the Infrastructure that is above-ground and is in an area defined as a "clear zone", and the Airport has determined that if the Infrastructure is placed properly in the new location, it will not interfere with air navigation; and

WHEREAS, the proper placement and maximum height of the Infrastructure, as determined by the Airport, is set forth on Exhibits 1 and 2; and

WHEREAS, College Park is not willing to place Infrastructure above-ground in an area defined as a clear zone, that is void of any other above-ground construction, unless Atlanta directs College Park regarding the exact placement and maximum height of the Infrastructure, and unless Atlanta adequately indemnifies College Park for any potential damages arising out of the Infrastructure's placement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ATLANTA, GEORGIA, that the Mayor or her designee is hereby authorized to execute a First Amendment to the Agreement on behalf of Atlanta whereby Atlanta shall direct College Park regarding the exact placement and height of the relocated Infrastructure, said location and height being set forth on Exhibits 1 and 2 hereto, and whereby Atlanta shall agree to the following indemnification language:

The City of Atlanta shall to the extent permitted by law, hold harmless, indemnify and defend the City of College Park, including but not limited to its elected officials, officers, agents, employees, successors, assigns, and authorized representatives, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorney fees, costs, causes of action of every kind and character, whether in law or in equity, and expenses of whatsoever kind or nature alleged against College Park as result of any aircraft colliding with the power poles or the overhead lines attached thereto which have been placed within the fifth runway at the geographic coordinates and do not exceed the mean sea level as shown on the attached table, Exhibit 2. The aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no even shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless.

BE IT FURTHER RESOLVED that the City Attorney be and hereby is directed to prepare said First Amendment for execution by the Mayor.

BE IT FINALLY RESOLVED that said First Amendment shall not become binding upon the City, and the City shall incur no obligation nor liability thereunder until the same has been signed by the Mayor and delivered to College Park.